

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1417 of 1996

in

SPECIAL CIVIL APPLICATION No 7149 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JANAKKUMAR J GONDHIYA

Versus

STATE OF GUJARAT

Appearance:

MR RD DAVE for Appellant
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 11/03/98

ORAL JUDGEMENT

1. This appeal is filed against a judgment and order passed by the learned single Judge in Special Civil Application No.7149 of 1986. The said petition was filed by the appellant for an appropriate writ, direction or order quashing and setting aside an order of suspension passed against him on December 21, 1994 (Annexure-D to the petition) and by directing the respondent-authorities to pay full salary and other consequential benefits as if an order of suspension had never been passed against him.

2. After hearing the parties, the learned Single Judge held that no case was made out to interfere with the order passed by the authorities and, hence, the petition was dismissed. Against that order, this Letters Patent Appeal is filed.

3. Notice was issued, pursuant to which the parties appeared. Affidavits and further affidavits were also filed.

4. Various contentions were raised by Mr. Dave, learned counsel for the appellant. He submitted that in accordance with a policy decision reflected in Government Circular dated August 7, 1990, both the actions of suspension and transfer, should not be taken at a time. It is clarified that only in exceptional circumstances simultaneous actions can be taken for which reasons should be recorded. In the instant case, both the actions were taken without recording reasons and, hence, the order is bad. It was further submitted that, even if it is held that the action of transfer and suspension could have been taken together, a condition imposed by the authorities on the appellant to stay at Baroda by fixing Baroda as the head quarter is contrary to law and de hors the Act and no such condition could have been imposed. Moreover, the order is discriminatory and violative of Articles 14 and 16 of the Constitution, inasmuch as, in similar cases, no such condition was imposed on other employees who were charged with corruption and placed under suspension. Finally, it was stated that, other employees have been accommodated at nearby places. Hence, the authorities may be directed to place the appellant at or near Junagadh.

5. Mr. Mehta, learned Assistant Government Pleader, on the other hand, supported the order passed by the authority. He submitted that both the actions can simultaneously be taken and in the facts and circumstances of the case, the authorities have taken both the actions. When the learned Single Judge has not interfered with the said order, there is no reason to

take a different view. Regarding change of head quarter, he stated that in May/June, 1998, the case of the appellant will be considered by the authority.

6. In the facts and circumstances, in our opinion, there is no ground to interfere with the order passed by the learned Single Judge. As far as circular dated August 7, 1990 is concerned, it is clear that it was issued pursuant to an interim order passed by a Division Bench of this Court in a petition. But the point is concluded in J.V. Puvar v. State of Gujarat; 1987 28(2) GLR 956 .

7. In that case, the Court held that in the facts and circumstances, the authorities were justified in taking both the actions and even after transferring the petitioner, the action of suspension which was taken was not unlawful or illegal. The actions were hence not interfered with by the Court.

8. In J.V. Puvar, the Court also considered a similar circular laying down guidelines for taking action of suspension and/or transfer of a government servant and stated:

"As a result of the Division Bench judgment, the State Government has issued a Circular laying down guidelines that while the power to suspend and transfer a delinquent vests in the State Government or competent authorities, such powers should be exercised with care and caution and very sparingly in cases only necessarily depending upon the exigencies of the situation. Therefore, it is not correct to say that transfer and suspension are to be imposed in only rarest of the rare cases. Possibility of indulging into similar activities elsewhere is one of the considerations where even after transfer, suspension is intended as per the guidelines and even as per the judgment of the Division Bench. A Government servant who is alleged to be corrupt cannot be trusted in service and must be suspended. A police officer who has abused his position and office cannot be trusted and hence he also must be suspended, and he cannot be trusted to discharge his duties anywhere."
(Emphasis supplied)

9. It is, no doubt true that J.V. Puvar is a decision of a Single Judge of this Court. We are,

however, in full and complete agreement with the law laid down in that decision that if an employee is placed under suspension and the allegations are of corruption, even if an employee is transferred, he can be placed under suspension.

10. In the instant case, the allegations relate to corruption and, as stated in the suspension order, the trap was successful. In the light of those allegations, in our view, both the actions, namely, transfer as well as suspension, could be taken. It cannot be said to be contrary to law and we see no ground to interfere with the action of preventive nature.

11. Regarding head quarter, normally, it is for the authorities to decide and a condition to remain at the head quarter can be imposed by the authority in exercise of power under Rule 151 of the Bombay Civil Services Rules, 1959.

12. Our attention was, no doubt, invited to a decision of a Single Judge of this Court in Special Civil Application No.2064 of 1985, decided on January 7, 1986. The learned Single Judge in that case directed the authorities to consider the application of the petitioner for change of head quarter during the suspension period. It is not stated by the learned Single Judge that the authority has no such power and, in our opinion, the order cannot be read laying down a rigid proposition of law that the authority has no such power. To us, it is clear that such a condition can be imposed by the authority. Hence, that point also cannot carry the matter of the appellant further.

13. It is true that some persons were accommodated at nearby places. The submission of the appellant was that his wife is serving at Junagadh. The appellant was transferred from Junagadh to Baroda on December 12, 1994 and immediately on the same day, an order of suspension was passed against him. According to him, therefore, when his head quarter was fixed at Baroda, it has created many problems. He cannot leave the head quarter because a condition was imposed on him with further condition that on every Monday and Thursday, he must get his presence marked in the office of the Joint Charity Commissioner, Baroda. His wife also cannot leave Junagadh because she is serving at that place. In our opinion, however, the learned Single Judge has rightly made observations regarding change of head quarter. That apart, in this Letters Patent Appeal, the learned Assistant Government Pleader has made a categorical

statement that the case of the appellant will be considered in May/June, 1998. Hence, to that extent, the grievance does not survive. An appropriate order will be passed by the authorities in near future.

14. Learned counsel for the appellant stated that the appellant has not been paid subsistence allowance from December 12, 1994 till today. He further stated that the appellant has not been paid salary during the period for which he was permitted to join. It is open to him to make representation for payment of salary as well as for subsistence allowance. From the record, however, it appears that, initially the appellant was insisting for withdrawal/revocation of suspension and did not report at Baroda. Only on February 3, 1997, he had shown his readiness and willingness to remain at Baroda. In the light of that circumstance, the authority will decide the question raised by the appellant and pass appropriate order on representation of the appellant in accordance with law.

15. Except the above observations and directions, we do not see any ground to interfere with the order passed by the learned Single Judge. Letters Patent Appeal deserves to be dismissed and is, accordingly, dismissed. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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